

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALINKA TACUMA WADE MOYE,

Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO,

Defendant.

No. C 09-03892 WHA
 No. C-09-03895 WHA
 No. C-09-03896 WHA
 No. C-09-03897 WHA
 No. C-09-03899 WHA
 No. C-09-03900 WHA
 No. C-09-03902 WHA

ORDER TO SHOW CAUSE

On August 25, 2009, plaintiff Malinka Moye filed at least 10 actions in the Northern District of California, including the 7 above-captioned actions before the undersigned. The 10 actions are as follows:

C-09-3892 WHA	Malinka Moye v. City and County of San Francisco
C-09-3893 MHP	Malinka Moye v. Derrick Collins, Vince Collins, et al.
C-09-3895 WHA	Malinka Moye v. Ratana Jiraittewanna
C-09-3896 WHA	Malinka Moye v. Red Oak Realty et al.
C-09-3897 WHA	Malinka Moye v. Lydia Dianne Baca and Rachale Young
C-09-3898 EDL	Malinka Moye v. Big Nates Barbeque, et al.
C-09-3899 WHA	Malinka Moye v. Myriad Ventures Inc. d/b/a Bay Car Stereo
C-09-3900 WHA	Malinka Moye v. La Donna Rewa Duncan
C-09-3901 JCS	Malinka Moye v. Fidelity National Title Co.
C-09-3902 WHA	Malinka Moye v. Lydia Dianne Baca

In addition to these 10 actions, plaintiff Moye has filed at least 9 other actions in this district since April 2008, including:

C-08-2051 PJH	Malinka Moye v. Vince Collins, et al.
C-08-2053 WHA	Malinka Moye v. La Donna Rewa Duncan
C-08-2054 JL	Malinka Moye v. Nate Thurmond
C-08-2055 MEJ	Malinka Moye v. Jack Chew
C-08-2056 PJH	Malinka Moye v. Ratana Jiraittewanna
C-08-2057 VRW	Malinka Moye v. Myriad Ventures Inc. d/b/a Bay Car Stereo

1 C-08-2125 WHA Malinka Moye v. Linda Brewer Stockdale
 2 C-08-2124 SBA Malinka Moye v. Lydia Baca
 3 C-08-2126 SBA Malinka Moye v. City and County of San Francisco, et al.

4 In each of these actions, plaintiff has sought to proceed *in forma pauperis*. In many, his
 5 application to proceed *in forma pauperis* was denied and the complaint was dismissed. Eight of
 6 the actions filed on August 25 remain on the docket. The “facts” alleged in the complaints in
 7 each of the 18 actions listed above have been no more than a paragraph consisting of short,
 8 incomplete and incomprehensible sentences. Additionally, the complaints fail to provide
 9 enough information to determine if any basis for federal jurisdiction exists. While some of the
 10 underlying facts alleged in plaintiff’s cases have differed slightly, to the extent they are
 11 comprehensible at all most of the actions appear to seek (or sought) relief primarily for an
 12 alleged illegal transfer of an estate, false imprisonment, robbery and attempted murder, and/or
 13 conspiracy to commit murder, aided by, among others, the San Francisco courts, San Francisco
 14 Police Department, San Francisco Sheriff Department, and Office of Public Defender.

15 The e-filing docket of the San Francisco Superior Court lists plaintiff as a party in
 16 approximately 80 actions of various types, filed beginning in March 2002. Most of these
 17 actions were filed by plaintiff, and many of the defendants have the same names as the
 18 defendants in the actions filed in this district. On August 11, 2006, in one of these actions,
 19 *Malinka Moye v. Lydia Baca*, Case No. CGC-06-450461, plaintiff was declared a vexatious
 20 litigant pursuant to California Code of Civil Procedure §§ 391.1, 391.3 and 391.7(a), and
 21 ordered not to file any new litigation in any California state court without first obtaining leave
 22 of court.

23 A district court must dismiss an *in forma pauperis* complaint *sua sponte* if a complaint is
 24 frivolous or wholly without merit or fails to name a proper defendant. 28 U.S.C. 1915(e)(2);
 25 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). A complaint is frivolous if “it lacks
 26 an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).
 27 Where the complaint alleges facts that are “clearly baseless,” “fanciful,” “fantastic,” or
 28 “delusional” it may be dismissed as frivolous. *Denton v. Hernandez*, 504 U.S. 25, 32–33
 (1992). If a pro se plaintiff can cure the factual allegations in order to state a claim, the court

1 must give him leave to do so. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc).
2 However, if repleading cannot cure the deficiencies the court may dismiss without leave to
3 amend, and even dismiss with prejudice. *See Cato*, 70 F.3d at 1106.

4 Federal courts have the inherent power to regulate the activities of vexatious litigants.
5 *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990). Under the power of 28 U.S.C.
6 1651(a), courts may restrict litigants with abusive and lengthy histories from filing further
7 actions. A court may restrict such litigants' future filing of actions or papers provided that it (1)
8 gives the litigant an opportunity to oppose the order before it is entered, (2) creates an adequate
9 record for review, (3) makes substantive findings as to the frivolous or harassing nature of the
10 litigant's actions, and (4) drafts a sufficiently tailored order. *Id.* at 1145–48.

11 Here, it appears from the complaint that plaintiff's claims are clearly frivolous and
12 without merit. When plaintiff's claims are dismissed, he does not appeal, but simply files
13 another case, or several more cases. Accordingly, plaintiff Malinka Moye must appear before
14 this Court on **OCTOBER 22, 2009 AT 8:00 A.M.**, to respond to the following order to show cause.
15 Additionally, plaintiff must file a written response no later than **OCTOBER 13, 2009, AT NOON**
16 addressing the following questions:

- 17 1. Why the complaints in the above-captioned actions should not be dismissed for
18 failure to state a claim.
- 19 2. Why plaintiff should not be declared a vexatious litigant and barred from filing
20 further actions in the Northern District of California with respect to these defendants or
21 substantially similar claims without pre-filing review.

22
23 **IT IS SO ORDERED.**

24
25 Dated: October 6, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE